

January 30, 2004

Via Electronic Filing

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: WC Docket No. 03-259 and Comp. Pol. File No. 667

Dear Ms. Dortch:

On behalf of Touch America, Inc. (Debtor-in-Possession) (Touch America DIP or Applicant), its attorneys hereby submit its statement of position in response to the Commission's Public Notice of January 20, 2004, DA 04-126.

As the Commission's Public Notice indicates, several commenters responding to the original Public Notice issued December 19, 2003, DA 03-259, objected to a grant of the application arguing that more time would be necessary to obtain alternative services. On January 16, 2004, Touch America DIP filed a letter indicating that it would continue service to four identified commenters until March 1, 2004.

Since the release of the January 20, 2004 Public Notice, several other entities have filed or telephoned the Commission requesting that Touch America DIP extend the deadline for its discontinuance of service. Touch America DIP has investigated the impact of extending its services to the entities that have submitted specific requests. That investigation considered the costs of continuing services, the revenues to be charged for such services, and the creditworthiness of each requesting entity, that is, the status of each entities payment history.

The investigation of the services and charges for requesting entities also disclosed that:

- three (3) entities are not ATM/FR customers;
- in certain cases the charges for the services rendered do not cover Touch America DIP's costs to provide those services;

- each of the requesting entities were originally customers of Qwest Communications Corporation that were required to be divested to Touch America DIP in June of 2000;
- the only information Touch America DIP has on the CPNI of these customers is the information originally furnished by Qwest at divestiture;
- in certain situations, such information was and remains inaccurate and incomplete;
- the deficiencies in the information about these customers is believed to be a cause for the delay in migrating these customers to Qwest or other qualified carriers of the customer's choosing;
- the delays in completing the migration of services underlies the need for extending Touch America DIP's services;
- several customers are delinquent in payment of their charges;
- in certain cases, the delinquencies in payment are due to disputes over billing; and
- the disputes over bills are due, in certain cases, to the information about the customers' CPNI that Touch America DIP received (or failed to receive) at divestiture.

Touch America DIP understands its obligations concerning the need for a grant of authority by the Commission prior to discontinuing its ATM/FR services. At the same time, as debtor-in-possession, it is responsible to preserve to the greatest extent possible the assets of the bankrupt entity's estate.

To balance these responsibilities, that in certain cases are conflicted by the extension of services being requested, Touch America DIP requests that by February 2, 2004, it be granted authority to discontinue its ATM/FR services for all customers other than those identified following.

Touch America DIP further requests that it be granted authority to discontinue its services for the customers identified hereinafter at the earlier of completion of successful migration of each customer's service to the carrier of its choosing or 12:00 midnight EST, February 29, 2004, subject to the following conditions.

1. Touch America DIP's extension of ATM/FR service shall apply only for the entities that have specifically requested an extension.

2. Touch America DIP's continuation of service to the named entities, is conditioned upon each entity paying the invoices for services rendered in January 2004 and to be rendered in the coming month of February 2004 and all past due charges and late payment fees. Each customer is being directly notified of its invoiced charges, current and past due. Payment of these invoiced charges must be received no later than February 10, 2004.

3. If payment is not received, Touch America DIP will terminate service for non-payment of charges due. Touch America DIP's right to terminate service for non-payment is supported by long standing policy and precedents including, *In the*

Matter of Mocatta Metals Corp. v. ITT World Communications, Inc., Memorandum Opinion and Order, 42 F.C.C.2d 453 (Released August 14, 1973); *In the Matter of Mocatta Metals Corp. v. ITT World Communications, Inc.*, Initial Decision of Administrative Law Judge, 54 F.C.C.2d 104 (Issued May 5, 1975); and see *FCC v. Nextwave Personal Communications Inc.*, 123 S.Ct. 832 (2003).

4. Touch America DIP will continue to work with customers that dispute certain of its billings and at the conclusion of such negotiations will refund any amounts shown to be clearly erroneous.

5. In addition, Touch America DIP must be paid what it is owed by any carrier that participates in providing services to these named customers.

6. Customers named as those to whom Touch America DIP agrees to continue service, but that are in arrears on previously rendered invoices that have not been paid, must pay in full by February 10, 2004, or make acceptable arrangements for payment by said date or their service will not be continued past February 10, 2004.

The requesting customers whose extension of service is affected by the foregoing are detailed hereinafter.

The following two entities requesting extensions, West Coast Hospitality Corporation and HP Management Services, Inc., do not receive ATM/FR services. HP Management Services, Inc., was disconnected in May 2003. West Coast Hospitality Corporation never had ATM/FR service, but received only voice services. Touch America DIP transferred all voice customers to a qualified carrier earlier in 2003 and has not provided voice services for several months.

Touch America DIP cannot respond to requests received by the Commission from David Frazell, David Barieri, Gerry Henson, Ancel Hawkins, and TNS Intersearch. Touch America DIP has no records of any customers by these names.

The customers that will have their ATM/FR services continued, subject to the payment of their invoices, are as follows:

5th 3rd Bank
Archstone-Smith
Brand Services
Burlington Coat Factory
Cimco Communications
Crane Plumbing
Federal Express
Kaplin, Inc.
Lamson & Sessions
J.M. McConkey Company
Nephi Rubber Products
NetLojix Communications, Inc.

NW Handling Systems, Inc.
Puget Sound Truck Lines
Space Imaging
SUPERVALU INC.
TRW (Northrop Grumman/Treasury)
Whalen Tire

Should there be any questions concerning the foregoing, please contact the undersigned.

Respectfully submitted,

/s/

Charles H. Helein
The Helein Law Group LLP
8180 Greensboro Drive, Suite 700
McLean, Virginia 22102
Telephone: (703) 714-1300
Facsimile: (703) 714-1330
Email: chh@thlglaw.com

**List of Parties Served
Via Mail, Email and/or Facsimile
with
Touch America, Inc. DIP's
January 30, 2004 Letter Notification on
Conditional Continuation of Service
Post-January 31, 2004**

Qualex International
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554
qualexint@aol.com

Ernest L. Bodoh, IT Manager
J.M. McConkey Company
P.O. Box 1690
Sumner, Washington 98390-0369
Fax: (253) 863-5833

Carmel Weathers
Brad Koerner
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
carmel.weathers@fcc.gov
brad.koerner@fcc.gov

Jean L. Kiddoo, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007-5116
jkiddoo@swidlaw.com
Counsel for 360networks inc.

Robert Woodward
Service Acquisition Manager
Treasury Communications Systems
Northrop Grumman Mission Systems
rbwoodward@notes.tcs.treas.gov

Robert G. Morse, Esq.
Wilkinson Barker Knauer, LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128
rmorse@wbklaw.com
Counsel for Qwest Communications
Corporation and Qwest LD Corporation

Robert W. Borlik
Sr. Vice President & Chief Information
Officer
SUPERVALU INC.
P.O. Box 990
Minneapolis, Minnesota 55440
Fax: (952) 828-4782

Kevin Thomas, General Manager
NW Handling Systems, Inc.
1100 SW 7th Street
Renton, Washington 98055-2939
Fax: (425-255-0500

Daniel Arnedro, CIO
Chief Information Officer
Archston-Smith
9200 E. Panorama Circle, Suite 400
Englewood, Colorado 80112
damedro@archstonesmith.com

Mark Gambalie
Crane Plumbing
c/o Carl Harkey
Wade Communications Consultants, Ltd.
1749 South Naperville Road, Suite 204
Wheaton, Illinois 60187-8192
Fax: (630) 588-2115
charkey@wadeconsultants.com

Vern Sams, Corporate Controller
Nephi Rubber Products
P.O. Box 310
La Porte, IN 43652-0310
Fax: (219) 324-5232
vsams@nrpjones.com

Joe Renteria, Jr.
Vice President
NetLojix Communications, Inc.
7001 Grapevine Highway, Suite 525
Fort Worth, Texas 76180
Fax: (817) 284-4541
jrenteria@netlogix.com

Stacy Haigney
In-House Counsel
Burlington Coat Factory
Fax: (212) 391-0074
stacy.haigney@coat.com
cc: Joe Funk - joe.funk@coat.com

Bill Dvorak
Cimco Communications
Fax: (630) 691-8788
w.dvorak@simco.net

James Faulkner
Space Imaging
j.Faulkner@spaceimaging.com

Lou Ruedebusch
5th 3rd Bank
Fax: (513) 534-3409
lou.ruedebusch@53.com

TNS Intersearch
mike.king@tnsi-i.com

Alan Eiland
Kaplan, Inc.
Fax: (212) 957-0576

Steve Helstron, IT Manager
Whalen Tire
904 S. Utah Avenue
Butte, Montana 59701

David Barbieri, VP,CIO
WestCoast Hospitality Corporation
W. 201 North River Drive, Suite 100
Spokane, Washington 99201
Fax: (509) 325-7324

Gerry Henson
Director of Information Systems
Puget Sound Truck Lines
Fax: (206) 621-7793

Jon Broyles, Network Administrator
Brand Services, Inc.
15450 Outer Highway 40, Suite 270
Chesterfield, Missouri 63021

Jerome R. Theus, Manager
Technology Management
Lamson & Sessions
25701 Science Park Drive
Beachwood, Ohio 44122

David Frazell
2145 W. 6th Avenue
Broomfield, Colorado 80020